

Supreme Court No. _____
Ct. App. No. 22504-6-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

GARY D. ACKERSON,

Appellant.

**MOTION FOR LEAVE TO FILE AMICUS CURIAE
MEMORANDUM IN SUPPORT OF APPELLANT'S MOTION FOR
DIRECT REVIEW**

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A. IDENTITY AND INTEREST OF AMICUS

The American Civil Liberties Union of Washington ("ACLU") is a statewide, non-partisan, non-profit organization with over 20,000 members dedicated to the preservation and defense of civil liberties. The ACLU has particular expertise and interest in the issues of drug policy reform and criminal justice. This Court has accepted our amicus briefs and memoranda in other cases involving these issues. See, for example, *Seeley v. State*, 132 Wn.2d 776, 940 P.2d 604 (1997); *State v. Shepherd*, 110 Wn. App. 544, 552, 41 P.3d 1235 (2002) (amicus memorandum submitted in support of petition for review). The ACLU endorsed Washington's Medical Use of Marijuana Act ("the Act"), which was approved as ballot measure I-692 by 60% of the state's voters in 1998.¹ The ACLU also has special expertise in the broad policy issues that affect the hundreds of seriously ill individuals throughout the state who treat debilitating and terminal illnesses with medical marijuana. We provide the public with information regarding the Act, in our electronic brochure entitled "The Washington Medical Use of Marijuana Act: A Guide for Patients, Caregivers, Physicians, Law Enforcement, and the Public" and regularly consult with patients, caregivers, government officials and defense attorneys concerning medical marijuana issues.

B. ISSUES TO BE ADDRESSED BY AMICUS

Amicus asks this Court to grant appellant's motion for direct review pursuant to RAP 4.2(a) (4) for the following reasons:

- A. The lower court misinterpreted the Act and wrongly excluded admissible expert and fact testimony offered by the defendant-patients.

¹ The Act is codified at RCW 69.51A.

- B. The lower court failed to interpret the Act as remedial legislation in the manner required by this Court's prior rulings, and instead restricted the Act's intended effect by barring defendant-patients from presenting evidence of their protected status at trial.
- C. The lower court's ruling barring the defendant-patient from presenting any evidence of protected status at trial deprived the defendant-patient of his constitutional right to due process and trial by jury.

C. WHY AMICUS BRIEFING WILL ASSIST THE COURT

The ACLU's amicus memorandum discusses authority regarding the admissibility of expert testimony which is not found in the appellant's motion. The Court's consideration of this authority would facilitate a decision of the case on the merits. RAP 1.2(a). The amicus memorandum also discusses additional grounds supporting direct review.

D. FAMILIARITY WITH ISSUES

The ACLU is fully familiar with the record and the parties' briefs in these cases, as well as the parties' motions for direct review in both cases.

E. CONCLUSION

For the reasons discussed above, pursuant to RAP 1.2(a), 10.6, and 13.4(h), the

ACLU requests leave to file the attached amicus memorandum for the Court's consideration.

Respectfully submitted this 5th day of November, 2004.

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